

**Private Probation -- Board Case No. 15, 2003. Date of Sanction: April 14, 2003.** A panel of the Preliminary Review Committee ("PRC") authorized the Office of Disciplinary Counsel ("ODC") to offer the Respondent attorney the sanction of a two-year private probation for violation of Rule 8.2 of the Delaware Lawyers' Rules of Professional Conduct. Rule 8.2 provides that it is professional misconduct for an attorney to make a statement in reckless disregard as to its truth concerning the integrity of a judge.

Following a ruling adverse to the Respondent's clients, the Respondent made certain statements to the press that suggested that the court's decision was made on a basis other than on the merits of the case and the legal arguments that were presented to the Court. The Respondent's statements implied that the court had acted out of concern or fear of personal or political repercussions. The PRC found that the Respondent's statements were not supported by any evidence, documentary or otherwise.

The Delaware Lawyers' Rules of Professional Conduct are clear concerning the propriety of public statements about the judiciary. Rule 8.2 provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." The Comment to Rule 8.2 states: "Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice."

In mitigation, the panel considered that the Respondent did not act with a dishonest or selfish motive, and that the Respondent does not have any disciplinary record. In aggravation, the panel considered that the Respondent has substantial experience in the practice of law.

Pursuant to Procedural Rule 8(b), the PRC determined that a private probation should be subject to four conditions:

(1) that the Respondent refrain from making any public statements concerning the judiciary or any matter before any tribunal that are not clearly supported by factual evidence;

(2) that the Respondent report to the Office of Disciplinary Counsel on the status of compliance with these conditions on a quarterly basis;

(3) that the Respondent provide full cooperation with the ODC in connection with the ODC's investigation of any allegations of unprofessional conduct which may come to the attention of the ODC while these conditions are in effect; and

(4) that pursuant to Rule 27 of the Delaware Lawyers' Rules of Disciplinary Procedure, the Respondent reimburse the ODC for the costs of its investigation.

Pursuant to Procedural Rule 9(a)(4)(D), the Respondent certified that the Respondent does not contest the findings of the PRC that there was probable cause that the Respondent engaged in professional misconduct. However, if the Respondent is not subsequently found by a panel of the PRC to have engaged in professional misconduct within the probationary period, the probation will be removed from the Respondent's formal disciplinary record and cannot be used in any subsequent disciplinary proceeding.